1954/41 **File No** B. Act

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Legal DEPARTMENT
B BRANCH

Subject:—

A Bill to amend
the Bombay Act
Act 1878
(Repeal of Pt. IX-B and
S. 43-A)

79

File No. B. 464/41

512-B

Bd. Sectt. Slip. 21 A

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Office of the R.L.A.

The subject matter of the appended draft Bill repealing sections 42-E and 43=A of the Bombay Abkari Act, 1878 falls under ~~entries~~ entries 31 and 37 in List Ii and entries 1 and 17 in list III in the Seventh Schedule to the Government of India Act, 1935. Although the Bombay Abkari Act, 1878 is an existing Indian law within the meaning of section 311(2) of the Government of India Act, the provisions which are proposed to be repealed in that Act by the draft Amending Bill were inserted there in by the Amending Bombay Act No.VI of 1939, which is not an existing Indian law within the meaning of that expression as defined in section 311(2) of the Government of India Act. It is possible however to contend that the provisions of section 42-E and section 43=A having become part of the Bombay Abkari Act, the provisions of the draft Bill which provides for repeal of these provisions of an existing Indian law viz. the Bombay Abkari Act and that therefore the draft Bill requires to be reserved for the consideration of the Gove rnor Gene ral with reference to section 107(2) of the Government of India Act. As the point is not quite free from doubt, the Advocate General is requested kindly to give his opinion on the question whether the draft Bill requires to be reserved for the consideration of the Gov erner General with reference to section 107(2) of the Government of India Act as being

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repagnant to an existing Indian law.

Remembrancer of Legal Affairs.

U.O. to the Advocate General Bombay, No.304 Confl.,
dated 30th November 1940.

Governor's Bill No. of 1940.

A Bill to amend the Bombay Abkari Act, 1878.

Bom. V of 1878

Whereas it is expedient to amend the Bombay Abkari Act, 1878, for the purpose hereinafter appearing,

And Whereas the Governor of Bombay has assumed to himself under the proclamation dated the 4th November 1939 issued by him under sec. 93 of the Government of India Act 1935, all powers vested by or under the said Act in the provincial Legislature.

26 G.e.5, Ch.2.

Now, therefore, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act.-

Short title.

1. This Act may be called the Bombay Abkari 'Second Amendment' Act, 1940-

Repeal of Part IX-B and section 43-A of Bom. V of 1878.

2. Part IX-B containing section 42-E and section 43=A of the Bombay Abkari Act, 1878, shall be repealed.

Bom. V of 1878.

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Under section 311(2) of the Government of India Act, 1935, "existing Indian Law" means, omitting the unnecessary words, any Law passed or made before the commencement of Part III of the Act,. Sections 42E and 43A of the Bombay Abkari Act were enacted after the commencement of Part III of the Government of India Act. The fact that these provisions were inserted in an Act which was in force at the commencement of Part III of the Government Of India Act cannot in my view make these newly inserted provisions "existing Indian Law" within the meaning of those words in section 311(2) of the Act, It ~~means to~~ seems to me, therefore that the draft Bill does not require to be reserved for the consideration of the Governor General with reference to section 107(2) of the Government of India Act.

Advocate General.

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26th April 1956.

Legal Department

As stated in the Remembrancer of Legal Affairs' opinion No. 303-Confl. dated the 30th November 1940 under executive instruction the previous approval of the Governor General will have to be obtained to the Bill to amend the Bombay Abkari Act, 1878, at p.33 ante, before enactment. For this purpose the Revenue Department should refer these papers to the Secretary to the Governor.

2- As the Bill will be enacted in 1941 it has been slightly revised.

3. It is not necessary to publish the Bill at present, After it receives His Excellency's assent, the Act will be published in the Bombay Government Gazette.

4. The question whether the Act should be extended to partially excluded areas by issuing a notification under section 22 of the Government of India Act is for the Revenue Department to decide.

5. After the intimation of the previous approval of the Governor General is received from the Secretary to the Governor, the Revenue Department should refer these papers to the Legal Department for further action with 20 copies of the Bill, 4 copies printed on blue paper and 16 copies on white paper.(Cf.L.D.Circular No.502, dated the 17th January 1938).

Secretary to Government

U.R. to R.D., No.67=confl. dated 11th February 1941.

S.C.

Acts.
Publication of the Bombay Abka ri (Amendment)Act,1941.

GOVERNMENT OF BOMBAY
Legal Department.
Resolution No. 3687

Bombay Castle, 25th Ap ril 1941.

Letter to the Secretary to the Governor, No.198-Confl., dated the 16th April 1941.

Letter from the Secretary to the Governor, No.201(28), dated the 18th April 1941.-

"With reference to your letter No.198-Confl.dated the 16th April 1941, forwarding a copy of a Bill to amend the Bombay Abkari Act, 1878, prepared by ~~him~~ His Excellency the Governor under paragraph (2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935, I am directed to say that under the previsons of the aforesaid paragraph, His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty.

2. The copy of the Bill is returned herewith with His Excellency the Governor's assnt signified ther on."

RESOLUTION.- The law should be published as Bombay Act No. IX of 1941, in the Bombay Governmen Gazette, dated the 26th April 1941.

2. The Act should be translated into Marathi, Gujarati, Kanmada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the A ct should be forwarded to the Revenne Department with refernece to the Memorandum from that Department dated the 15th April 1941.

By order of the Governor of Bombay

(P. N. MOOS
For (Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of theAct may be forwarded to the Legal Department).

The Revenue Department.)
The Oriental Translator to Government.) With a copy
The Secretary to the Bombay Legislative) of ~~x~~ the
Council.) Act.
The Secretary to the Bombay Legislative)
Assembly.

*With five extra copies.

S.C.
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Legal Department

The Bombay Abkari (Amendment) Bill has received the assent of the Governor on the 18th April 1941 and it has been published as Bombay Act No.I of 1941 in the Bombay Government Gazette, dated the 26th April 1941.

2. Draft notification under section 92(1) of the Government of India Act, 1935 for applying the Act to the partially excluded areas in the Province is furnished herewith to the Revenue Department.

For Secretary to Government

U.R' to R.D. No.3829 dated the 29th april 1941.

S.C.
26th April 1956.

NOTIFICATION

Revenue Department

Bombay Castle, - 1941.

No. .-In exercise of the powers conferred by/sub-section (1) of section 92 of the Government of India Act, 1935, the Govevrnor of Bombay is pleased hereby directed that the Bombay Abkari (Amendment Act, 1941 (Bom.XX of 1941) shall apply to the Province of Bombay.

By order of the Governor of Bombay.

Secretary to Government.

S .C.
26th April 1956.